

renounced the benefit of her legitim, which was due unto her after her father's decease, especially there being no other child. And where it was alleged, that she behoved then to confer, it was thought that collation should only be among brethren or sisters, and not betwixt these parties.

Fol. Dic. v. 1. p. 149. Spottiswood, p. 133.

No 3.

1631. February 19.

CORSAN against CORSAN.

THIS cause being mentioned the 9th of February 1631*, and it being further *alleged* by the defender, That the pursuer, by virtue of the clause libelled in the contract†, would have right to no more, but to her part of the dead's part of his goods and gear, and could not acclaim a portion natural thereof, with these two daughters defenders; for albeit by that contract, she might have right to her equal part of all, both for bairns-part, and for the dead's part, with her two sisters named in that contract, now deceased, yet that might lawfully have holden, where both she and these two sisters were all forisfiliate, before this contract; but it is not alike, for these two defenders who are begotten since, and have received no part of their father's goods, and who want their portion natural, so that of reason they ought to have their portion natural, as the pursuer got, and as the two defunct sisters got; and after that, the pursuer might be partner of the rest; otherwise if she acclaimed to be portioner of all the defunct's goods, she ought to confer with the defenders, that portion she got from her father before. This allegiance was repelled, and the LORDS found, that the pursuer ought to have her equal part of the defunct's goods, with these defenders, without any collation of that which she received before, to which the LORDS found, that she could not be compelled.

Fol. Dic. v. 1. p. 149. Durie, p. 573.

No 4.

Collation takes no place where it is prohibited; as, for example, where a father, in his daughter's contract of marriage, besides her tocher, made this provision, "that she should have an equal proportion of his goods at his death with his other children."

1663. February 18. DUMBAR of Hemprigs against LADY FRAZER.

My Lady Frazer, being first married to Sir John Sinclair of Dumbeath, next to the Lord Arbuthnot, and last to the Lord Frazer, Dumbar of Hemprigs, as executor confirmed to Dumbeath, pursues her, and the Lord Frazer her husband, for his interest, for delivery, or payment of the moveables of Dumbeath, intromitted with by her. It was *answered*, That she had right to the half of Dumbeath's moveables, as his relict, and her intromission was within that half. It was *replied*, That she had only right to a third; because Dumbeath had a bairn of the former marriage, who survived him, and so the executry must be imparted. It

No 5.

An only child being forisfiliate by marriage, and having got a tocher, but not bearing "in satisfaction of children's part," was found notwithstanding obliged to collate that

* The case alluded to is, McMillan, &c. against Corsans, Durie, p. 566., *voce* PROVISIONS TO HEIRS AND CHILDREN.

† The terms of the contract are stated on the margin above.